

**Brookline Board of Appeals  
January 28, 2016, 7:00 PM  
Public Hearing**

**333 Washington Street  
6<sup>th</sup> Floor Selectmen's Hearing Room**

**Board Members Present:** *Jesse Geller (Chairman), Johanna Schneider, Christopher Hussey*  
**Staff Present:** *Michael Yanovitch (Building Department), Jay Rosa (Planning Department)*

**315 Reservoir Road**

**Proposal:** Request to extend previously granted variance relief for an additional 6 months

**Zoning District:** S-10 (Single-Family)

**Precinct:** 13

**Board Decision:** Continuance request **withdrawn**

**118 York Terrace**

**Proposal:** Construct a second-story addition above existing sunroom

**Zoning District:** SC-7 (Single-Family and Converted for Two-Family)

**Precinct:** 11

**Board Decision:** Relief request **granted**, subject to conditions

**172 Dean Road**

**Proposal:** Convert attic and basement into living space and construct a second-story addition above existing sunroom

**Zoning District:** S-25 (Single-Family)

**Precinct:** 14

**Board Decision:** Relief request **granted**, subject to conditions

*Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.*

*Decisions shall be posted on the Town of Brookline website ([www.brooklinema.gov](http://www.brooklinema.gov)). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.*

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**Board Members Present** – Jesse Geller (Chairman), Johanna Schneider, Christopher Hussey  
**Staff Present** – Michael Yanovich (Building Dept.), Jay Rosa (Planning Dept.)

**7:00PM**

**315 Reservoir Road** – Request to extend previously granted variance relief

Board Chairman Geller opened the hearing and called case #2013-0095. Mr. Geller reviewed standard hearing procedure.

The Petitioner's Attorney Robert Allen, of the Law Office of Robert Allen located at 300 Washington Street Brookline, waived the reading of public hearing notice for the record and stated that he represents property owners Stephen Hilt and Gregory Fenton. Attorney Allen stated that a variance was granted by this Board to construct a single-family dwelling on the undersized lot at 315 Reservoir Road. The Petitioner did not act on this variance during the 12-month period following the grant of relief and therefore requested, and was granted, an extension of that variance through February 6, 2016 as permitted by M.G.L c.40A.

Subsequent to that grant of the variance, the Petitioner purchased an adjacent property and has worked closely with the Preservation Commission to appropriately develop that property as well. Attorney Allen stated that no development associated with the variance has occurred at 315 Reservoir Road and the Petitioner is precluded from requesting an additional extension period. Attorney Allen stated that the Petitioner wishes to withdraw the request for further extension of variance relief.

**The Board had no further questions and unanimously voted to grant this request to withdraw.**

**118 York Terrace** – Construct a second story addition above the sunroom

Board Chairman Geller called case #2015-0060 and reviewed standard hearing procedure.

The Petitioner's Attorney Robert Allen, of the Law Office of Robert Allen located at 300 Washington Street, Brookline, waived the reading of public hearing notice for the record and introduced property owner Gerry Dwyer and project architect Stephen Sousa.

Attorney Allen stated that the property at 118 York Terrace includes a 2 ½ story brick structure located in a moderately dense residential neighborhood. The structure is located on a corner lot at the intersection of York Terrace and Lancaster Terrace. This layout provides to front yards but the primary entrance to the structure faces York Terrace. Attorney Allen also confirmed that a detached two-car garage is located at the southeastern portion of the property.

Project Architect Stephen Sousa, of Sousa Design located at 81 Boylston Street, Brookline, stated that the Petitioner is requested to reconstruct an existing single-story sunroom and construct a second-story addition above. Mr. Sousa stated that the new addition will not alter the existing footprint of the structure and will increase the gross floor area of the structure by 165 square feet. Zoning relief for the resulting floor area ratio (FAR) and the pre-existing nonconforming front-yard setback is required to complete this proposed work.

Board Chairman Geller noted discrepancies between the Petitioner's submitted gross floor area calculation and calculations included in the submitted Planning Board report. Mr. Sousa confirmed that the gross floor area will increase from 2,516 s.f. to 2,681 s.f., with an FAR increase from .37 to .39.

Attorney Allen stated that this proposal received unanimous support from the Planning Board. Attorney Allen further detailed required zoning relief and compliance with standards for the grant of a special permit. Attorney Allen stated the Board of Appeals may grant a special permit to allow for an exterior addition up to 120% of the maximum FAR requirement if design review standards are satisfied. Attorney Allen stated that the proposed design is consistent with the surrounding single-family neighborhood, the streetscape will not be significantly altered as a result of the second-story addition, and landscaped/open space will not be altered because the addition follows the existing structural footprint. Attorney Allen described this work as an improvement to the interior functionality of the home rather than a "maxing out" of the gross floor area. Attorney Allen further stated that the non-conforming front-yard setback along Lancaster Terrace will remain unchanged and the Petitioner is proposing various landscape planting to serve as counterbalancing amenity for this required setback relief in accordance with Zoning By-Law Section 5.43.

Attorney Allen noted that eight area residents submitted letters in support of this proposal, and Attorney Allen believed that the proposal appropriately satisfies the general standards for a special permit as required by By-Law Section 9.05 because:

- The specific site is an appropriate location for such a use, structure, or condition
- The use as developed will not adversely affect the neighborhood
- There will be no nuisance or serious hazard to vehicles or pedestrians
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use
- The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people

The Board had no further questions and Chairman Geller called for public comment in favor of, or in opposition to, the Petitioner's proposal.

No members of the public commented.

Board Chairman Geller requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously supported this proposed side addition above the existing sunroom. The footprint of the structure will not be altered and requested FAR relief represents a modest extension of the pre-existing nonconforming floor area.

Board Members generally supported the design of the addition but noted that proposed front and side elevations are inconsistent in terms of the fascia alignment. The Board also suggested that the applicant consider reducing the size of addition and sunroom windows to better match the existing home. Mr. Rosa confirmed that the Board also requested that the applicant come back before the Planning Board to review those suggested modifications.

Therefore, the Planning Board recommended approval of the plans by Sousa Design, dated 11/03/2015 and revised 11/16/2015, and the site plan by David Dwyer, dated 12/7/2015, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and corrected elevations subject to the review and approval of the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chairman Geller requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department also has no objection to the relief as requested. Mr. Yanovitch stated that Zoning By-Law Section 5.22 specifically allows for projects of this nature. Mr. Yanovitch also agreed that the Petitioner is not maximizing the FAR flexibility that is provided by this section of the By-Law. Mr. Yanovitch stated support for the design of the exterior addition and confirmed that the Building Department will work with the Petitioner to ensure compliance with all imposed conditions and building codes if necessary relief is granted by the Board.

### ***Board Deliberation***

Board Member Hussey supported the Petitioner's request for special permit relief. Mr. Hussey stated that the proposed addition is minor and creates an attractive study area. Mr. Hussey also supported the Planning Board's design review findings.

Board Member Schneider concurred with these comments and stated that the modest addition appropriately satisfies the standards for special permit relief under By-Law Section 9.05.

Board Chairman Geller concurred and supported the Petitioner's proposal and the relief as requested. Mr. Geller reiterated that the Petitioner should submit a revised zoning table to the Building Department detailing final existing and proposed floor area calculations.

**Unanimous Board grant of requested relief, subject to conditions stated for the record.****172 Dean Road – Convert Attic and basement into living space**

Board Chairman Geller opened the hearing and called case #2015-0061. Mr. Geller reviewed standard hearing procedure.

The Petitioner's Attorney Robert Allen, of the Law Office of Robert Allen located at 300 Washington Street, Brookline, waived the reading of public hearing notice for the record introduced property owner Vishakha Sabharwal and project architect Stephen Sousa. Attorney Allen stated that the Sabharwals purchased the 2 ½ story single-family dwelling in 2015. The structure is over 100 years old and requires interior renovation. Attorney Allen stated that the Petitioner wishes to convert basement and attic area to living space and construct an exterior second-story addition at the side. Attorney Allen stated that the Planning Board did not review the proposed exterior addition but this modification to project plans does not trigger any additional zoning relief above and beyond the cited need for floor area ratio (FAR) related zoning relief. For this reason, Attorney Allen agreed that this proposal should go back before the Planning Board for final design review if approved by the Board of Appeals.

Project Architect Stephen Sousa reviewed project details with the Board. Mr. Sousa stated that the Petitioner intends to reutilize basement and attic space to expand the living area provided by the home and recapture the second floor above the existing single-story sunroom, specifically to extend the master bathroom area. Mr. Sousa stated that the proposed exterior addition would create 255 square feet of new living space and the basement/attic conversion recaptures 1,371 square feet of living space. Mr. Sousa stated that the floor area increase does not alter the structural footprint and the majority of new floor area is located within the existing interior of the structure.

Board Chairman Geller questioned if and how the proposed shed dormer at the front contributes to the floor area calculation. Mr. Sousa stated that the shed dormer increases the gross floor area by 50 square feet. Mr. Sousa also confirmed that the proposed gross floor area of 5,905 square feet generates an FAR of .41, which is 204% of the allowed floor area for this property within the S-25 residential district.

Board Member Hussey requested additional detail regarding the increase in total bedrooms resulting from this revised proposal. Mr. Sousa stated that the reconfigured interior space includes 3 additional bedrooms for a total of 7 bedrooms.

Attorney Allen stated that the Petitioner's proposal can be characterized as an extension of the pre-existing nonconforming FAR. No additional zoning nonconformities arise from proposed exterior modifications and all floor area increases are contained within the existing footprint. For these reasons, Attorney Allen believed that this proposal may be granted through a special permit, rather than a variance, following a M.G.L c.40A, Section 6 finding by the Board that no new zoning nonconformity arises and the project does not result in substantial detriment to the surrounding neighborhood.

Attorney Allen cited recent case law, including *Deadrick v. Zoning Board of Appeals of Chatham (2014)* and *Gale v. Zoning Board of Appeals of Gloucester (2011)* that provides protection for single and two-family dwellings to extend or alter a pre-existing nonconforming structure, provided that there is a finding of no substantial detriment. Attorney Allen also believed that the Petitioner's

proposal does not increase the nonconforming nature of the structure. Attorney Allen referenced several letters of support for the project submitted by abutters as evidence that the proposed floor area expansion does not result in substantial detriment. Attorney Allen concluded his statements by reviewing project compliance with the standards for the grant of a special permit if the Board does indeed reach a Section 6 finding.

The Board had no further questions and Chairman Geller called for public comment in favor of, or in opposition to, the Petitioner's proposal.

No members of the public commented.

Board Chairman Geller requested that Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously supported the proposed attic and basement conversion with the expanded front dormer. The Planning Board did not see or review the proposed side addition that is currently before the board. Board Members considered various design options for the front dormer but did ultimately agree that the architect's solution is the least impactful and fits with the existing character of the neighborhood. Therefore, the Planning Board recommended approval of the site plan by George C Collins dated 8/25/15 and plans by Sousa Design, dated 10/8/15, subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit final elevations and floor plans subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final site plan, including landscaping, subject to the review and approval of the Assistant Director of Regulatory Planning
- 3) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

Mr. Rosa suggested that condition #1 be modified to require Planning Board approval should the Board of Appeals grant necessary zoning relief.

Board Chairman Geller requested that Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department does not object to the relief as requested. Mr. Yanovitch stated that the Board has increasingly heard requests for Section 6 findings, particularly related to FAR. Mr. Yanovitch believed that cited case law on this matter is applicable and it is again worth noting that the proposed alteration to the nonconforming FAR is entirely contained within the existing footprint. Mr. Yanovitch confirmed that the Building Department will work with the Petitioner to ensure compliance with all imposed conditions and building codes if the Board

### ***Board Deliberation***

Board Member Hussey stated that the proposed exterior addition above the sunroom provides a more generous living area but he did not see this floor area increase as a necessity from both an architectural and/or design standpoint. Mr. Hussey also stated that a reduction of finished

basement or attic space would serve to decrease the level of overall nonconformity without limiting the interior functionality of the structure.

Board Chairman Geller stated that he is comfortable applying the Section 6 analysis to proposed interior floor area expansion but the exterior addition creates difficulty in terms of considering what constitutes substantial detriment. Mr. Geller stated that he was troubled by a proposed gross floor area that is greater than 200% of the allowed for this district. Mr. Geller also stated that cited case law does not establish a cap in terms of how far a property owner may expand a particular pre-existing nonconformity. Mr. Geller also did not believe that the term reconstruct is effectively defined in both M.G.L. c.40A, Section 6 or the Town Zoning By-Law. Mr. Geller also stated concern that the determination of substantial detriment should not be based on third-party reasoning, abutter support letters in this instance.

Mr. Geller acknowledged that the footprint of the structure will not be altered despite the floor area increase and stated that the scale of the proposed exterior addition is perhaps not significant when considering the visual impact on a lot of this size.

Board Member Schneider agreed that current case law on this matter does not establish upper limits for nonconformity nor does it clearly define substantial detriment. Ms. Schneider believed that the Board is left with the current law established by Deadrick at this moment, regardless of how precedent or refined limitations may evolve in the future. With this in mind, Ms. Schneider believed that this proposal before the Board aligns with the Deadrick precedent. Ms. Schneider also noted that the alteration of the pre-existing nonconforming floor area is not required to remain within the structural footprint. For these reasons, Ms. Schneider supported the request for a Section 6 finding and believed that the project appropriately satisfies standards for the grant of a special permit in accordance with By-Law Section 9.05.

Board Chairman Geller and Board Member Hussey again expressed concern regarding the resulting floor area that is 200% of allowed for the district. However, Mr. Geller believed that the 200% is an arbitrary cap that is not applicable for all projects and lots. Mr. Geller stated that this line of thinking really leaves the Board with a By-Law Section 9.05 evaluation for the grant of a special permit when evaluating substantial detriment associated with the Section 6 finding.

Board Chairman Geller and Board Member Hussey agreed that the proposed interior conversion and the exterior addition satisfy the standards for the grant of a special permit under By-Law Section 9.05.

**Unanimous Board determination of no substantial detriment (Section 6 finding) and grant of special permit relief, subject to the following revised conditions:**

- 1) Prior to the issuance of a building permit, the applicant shall submit final elevations and floor plans subject to the review and approval of the Planning Board.**
- 2) Prior to the issuance of a building permit, the applicant shall submit a final site plan, including landscaping, subject to the review and approval of the Assistant Director of Regulatory Planning**
- 3) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land**

**surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.**

Board Chairman Geller reminded the Petitioner that the proposal must come back before the Board of Appeals if the Planning Board does not support final elevations/floor plans, or if the proposal is substantially modified.

**Unanimous Board approval of draft hearing minutes from 1/14/2016 and 1/21/2016.**

**Hearing closed.**